



State of Rhode Island and Providence Plantations
DEPARTMENT OF EDUCATION
Shepard Building
255 Westminster Street
Providence, Rhode Island 02903-3400

Enclosure 6c
December 4, 2018

Ken Wagner, Ph.D.

Commissioner

December 4, 2018

TO: Members of the Council of Elementary and Secondary Education

FROM: Ken Wagner, Ph.D., Commissioner

RE: Rhode Island League of Charter Schools Variance Request

I present for your consideration a request to grant authority to the Commissioner of Education to approve the variance request detailed below. The variance request, submitted by the Rhode Island League of Charter Schools on behalf of their member schools, is for the RI Nutrition Requirements 2009 (RINR 2009) Nutrition Criteria for RI School Food Service Programs, or successor regulations that may contain similar requirements.

Variance Request:

On behalf of its member charter schools, The Rhode Island League of Charter Schools seeks a variance of the state-specific requirement for whole grains: *"on a weekly basis, at least one half (1/2) of the grain servings in USDA meals must be one hundred percent (100%) whole grain and the remaining servings be whole grain rich."*

The variance would allow *all* grain servings in USDA meals be *whole grain rich*, consistent with federal nutritional standards. Since the establishment of Rhode Island nutritional regulations in 2009, the Hungry Free Kids Act of 2010 updated federal nutritional guidelines allowing for *all* grain servings to be *whole grain rich*. The federal meal pattern has established age-appropriate calorie requirements and daily requirements for fruits and vegetables that address nutritional concerns that the 2009 Rhode Island nutritional guidelines sought to address at the time of adoption. Thus, the granting of the requested variance would not adversely affect the health and safety or civil rights of students in independent charter schools. See R.I. Gen. Laws 16-77.2-3(g), 16-77.3-3(g), and 16-77.4-3(g). It is anticipated that individual independent charter schools will be submitting requests for a variance of the "100% whole grain requirement" in the course of the next several months.

In accordance with Rhode Island General Law 16-77.2-3(g), 16-77.3-3(g), 16-77.4-3(g), and the RI Charter School Regulations 200-RICR-20-05-2.2.10, the Commissioner may grant variances to Council regulations, with the express approval of the Council on Elementary and Secondary Education. As such, the consideration of this variance request (and anticipated individual requests from independent charter schools for variances from the same requirement in the Council's current or successor regulations) is within the purview of the Commissioner, given the approval of the Council on Elementary and Secondary Education.

RECOMMENDATION: That the Council on Elementary and Secondary Education delegate its authority to the Commissioner to approve the granting of a variance from the “whole grain requirement” contained in RI Nutrition Requirements 2009 (RINR 2009) Nutrition Criteria for RI School Food Service Program, or successor regulations, to any charter school that may submit such acceptable request.

Enclosed Documents:

- Rhode Island League of Charters Variance Request Letter



Rhode Island League of Charter Schools

Keith A. Oliveira
Executive Director

October 29, 2018

Ken Wagner, Ph.D.
Commissioner
Rhode Island Department of Elementary
and Secondary Education
255 Westminster Street
Providence, RI 02903

Dear Commissioner Wagner:

The Rhode Island League of Charter Schools, on behalf of several of our member charter schools, is preparing to engage in a procurement process to secure a food service vendor for the 2019-20 school-year. In so doing, we request your consideration of a variance of the *2009 Regulations Governing Nutritional Requirements for Reimbursable Meals and Competitive Foods and Beverages*.

We seek a variance to the whole grain requirement that *on a weekly basis, at least one half (1/2) of the grain servings in USDA meals must be one hundred percent (100%) whole grain and the remaining servings be whole grain rich.* We seek a variance that would allow *all grain servings in USDA meals be whole grain rich*, which is consistent with federal nutritional standards.

Since the passage of the Rhode Island nutritional regulations in 2009, the federal *Healthy Hungry Free Kids Act of 2010 (HHFKA)* updated the federal nutritional guidelines based upon the most current scientific research and healthy eating patterns and allows for all grain servings to be whole grain rich. Please see the attached USDA memo, dated April 26, 2012, which reflects the extensive research on the issue and the standards by which we intend to comply. Allowing all grain servings to be whole grain rich also aligns with the Dietary Guidelines for Americans (DGA) and the dietary guidelines of the American Heart Association and the American Diabetes Association.

In the absence of strong federal nutrition regulations in 2009, Rhode Island's nutritional regulations limited refined grains and provided a safeguard to increased beneficial nutrients (fiber) and limited non-beneficial nutrients associated with increased risk for chronic disease (sodium, saturated fat, sugar). However, under the HHFKA, the federal meal pattern now addresses these concerns through age appropriate calorie requirements and daily requirements for fruits and vegetables, as referenced in the USDA guidance.

There are also very practical realities of allowing for all grain servings to be 100% whole grain rich. There are very real challenges to finding food products that are 100% whole grain that are also palatable to children. Many of our schools have experienced a significant number of students, most of whom are free and reduced lunch eligible, not eat school meals because they are unpalatable. Also, there is a decreased variety grain offerings that meet the Rhode Island requirements because most school nutrition food service products are formulated to meet the federal whole grain rich standard.

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Commissioner Ken Wagner

October 29, 2018

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For these reasons, the Rhode Island League of Charter Schools requests your consideration of providing a variance to the Whole Grain/Whole Grain-Rich requirements of the Rhode Island nutritional regulations for reimbursable meals.

Respectfully,

A handwritten signature in blue ink, appearing to read "Keith A. Oliveira", with a long horizontal flourish extending to the right.

Keith A. Oliveira
Executive Director

Attachment:

- *USDA, Memo Code SP 30-2012: Grain Requirements for the National School Lunch Program and School Breakfast Program.*